



US Army Corps
of Engineers
Alaska District

Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

Public Notice of Application for Permit

PUBLIC NOTICE DATE: 22 February, 2018

EXPIRATION DATE: 26 March, 2018

REFERENCE NUMBER: POA-2012-124

WATERWAY: Kivalina Lagoon

Interested parties are hereby notified that a Department of the Army permit application has been received for work in waters of the United States (U.S.) as described below and shown on the enclosed project drawings.

All comments regarding this Public Notice (PN) should be sent to the address noted above. If you desire to submit your comments by email, you should send it to the Project Manager's email as listed below or to regpagemaster@usace.army.mil. All comments should include the PN reference number listed above.

All comments should reach this office no later than the expiration date of this PN to become part of the record and be considered in the decision. Please contact Janet Post at (907) 753-2831, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at janet.l.post@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Alaska Department of Transportation and Public Facilities (ADOT), Attention: Brett Nelson, 2301 Peger Road, Fairbanks, Alaska 99709. Phone: (907) 451-2238 Email: brett.nelson@alaska.gov

LOCATION: The beginning of the project is located at within Section 21, T. 27N., R. 26 W., Kateel Meridian; USGS Quad Map Noatak C-5; Latitude 67.7301° N., Longitude 164.5442° W.; in Kivalina, Alaska. The end of the project is located at

within Section 20, T. 28N., R. 25W., Kateel Meridian; USGS Quad Map Noatak D-5; Latitude 67.8031° N., Longitude 164.3873° W.; in Kivalina, Alaska.

PURPOSE: The applicant's stated purpose is to construct a safe, reliable, all season evacuation road between the community of Kivalina and K-Hill. The Kivalina Evacuation Road project would provide Kivalina residents an evacuation route in the event of a catastrophic storm or ocean surge, allowing evacuees to temporarily mobilize to take refuge at an assembly site on K-Hill.

PROPOSED WORK:

- Placement of 195,000 cubic yards of clean gravel, rock, and rip rap into 8.2 acres in the Kivalina Lagoon to construct:
 - 110 foot long x 27 foot wide x 25 foot high bridge.
 - 3,900 foot long x 22 foot high x 30 foot wide surface x 120 foot base (toe-to-toe) approach.
- Placement of 518,000 cubic yards of clean gravel and silts into 66 acres of wetlands to construct:
 - 7.5 mile long x 60 foot wide (toe-to-toe) two lane gravel road with side slopes 3:1 from end of approach to K-Hill;
 - Two permanent staging pads: a 300 foot x 630 foot terminal pad (4.3 acres) and a 290 foot x 490 foot approach staging pad (3.3 acres).
- Placement of 52,800 cubic yards of gravel and silts into 7.2 acres of wetlands to construct four spur roads to material sites:
 - Four spur roads are: 1500 feet x 50 feet, 2900 feet x 50 feet, 1800 feet x 50 feet, and 275 feet x 50 feet.
- Up to Four Material sites with excavation not to exceed 297.3 acres of wetlands.

All work would be performed in accordance with the enclosed plan (sheets 1-36, dated January 2018).

Project Component	Fill Type	WOUS Acres Impacted	Total Acres Impacted	Cubic Yards Fill in WOUS
Section 404				
Road and Staging Pads	Gravels and Silts	66.0	66.7	518,000
Material Sites	Excavation	297.3	326.8 ¹	(765,800)
Material Site Spur Roads	Gravels and Silts	7.2	7.2	52,800
Section 10				
Bridge and Approaches	Gravel, Rock, Rip Rap 8 Piles up to 4 ft. diameter = (100.6 sq. ft.)	8.2	8.2	195,000
Total Impacts		378.7	408.8	
Total Fill		765,800		
Total Excavation		765,800		

1. Disturbance within the defined Material Site boundaries is expected to be smaller than the boundaries being permitted. Additional geotechnical drilling and determination of material quality and quantity within pit boundaries has yet to be determined. This additional data will be used to define the final material site footprint.

Additional Information: Alaska Department of Transportation and Public Facilities (ADOT) has prepared an Environmental Assessment located at <http://dot.alaska.gov/nreg/KivalinaEvacRd/>

Other required authorizations:

- US Coast Guard Bridge Permit
- ESA Section 7 Consultation – US Fish and Wildlife Service
- ESA Section 7 and Marine Mammal Protection Act Consultation - National Marine Fisheries Service
- Essential Fish Habitat Consultation – National Marine Fisheries Service
- Cultural, Historical, and Archaeological Resources Consultation (Section 106 Review); Dept. Natural Resources (ADNR), Office of History & Archaeology and State Historic Preservation Office (SHPO)

Right Of Way (State-owned non-marine waters and submerged lands); ADNR
Material Site Permit, NANA Corporation, and ADNR
Alaska Pollution Discharge Elimination System Construction General Permit for
Stormwater Associated with Construction Activities; Dept. Environmental
Conservation, Division of Water
Title 16 Fish Habitat Permit; Alaska Department of Fish and Game (ADFG)
Temporary Water Use Permit, ADFG
Title 9 Community Infrastructure and Conditional Use Permit, NW Arctic Borough

APPLICANT PROPOSED MITIGATION: The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to waters of the U.S. from activities involving discharges of dredged or fill material.

a. Avoidance: The shortest road route and lagoon crossing were chosen, which included avoiding the higher functioning wetlands and waters. In addition, material source numbers were reduced.

b. Minimization: The project footprint was minimized by using 3:1 side slopes on the roads, utilizing a subset of the material site acreage for material site extraction and production, restoring material sites after project completion, and combining work pads into the finished project design. The project will also minimize impacts to fish and wildlife through construction timing windows, by incorporating a bridge and fish passage culverts in the lagoon crossing design, using fish passage culverts on all fish bearing waters, and following final agency recommendations during construction. Implementation of best management practices during construction will minimize sediment deposition and secondary impacts to Waters of the U.S.

c. Compensatory Mitigation: The reason for this project is public safety; there are no economic drivers. Due to the avoidance and minimization efforts ADOT has undertaken during the planning and design of this project, minimal cumulative impacts, material site restoration and functional lift, the vast wetland landscape within the HUC8 watershed, the existing subsistence zoning, the conservation status of lands within and adjacent to the project watershed, and by following the 404(b)(1) Guidelines sequence, adhering to current Alaska Regulatory guidance, no compensatory mitigation is offered.

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

CULTURAL RESOURCES: The ADOT is the lead federal agency responsible for compliance with the requirements of Section 106 of the National Historic Preservation Act. The ADOT initiated consultation with the AK SHPO on August 7, 2017. AK SHPO concurred with their finding of no historic properties adversely affected for the subject property, conditional to including archaeological monitoring and an Inadvertent Discovery Plan for the subject project.

ENDANGERED SPECIES: The project area is within the known or historic range of the Spectacled Eider, Steller's eider, Polar Bear, Bearded seal, Ringed seal, Bowhead whale, Steller sea lion, North Pacific Right whale, Mexico DPS Humpback whale, Western North Pacific DPS humpback whale, Fin whale, and Sperm whale.

The ADOT is the lead federal agency. The US Fish and Wildlife Service concurred that with the incorporation of the polar bear interaction plan, the proposed action is not likely to adversely affect listed polar bears. And the action is also not likely to adversely affect listed Eiders. (December 21, 2017)

The National Marine Fisheries Service concurred that the proposed action is not likely to adversely affect Bearded seal, Ringed seal, Bowhead whale, Steller sea lion, North Pacific Right whale, Mexico DPS Humpback whale, Western North Pacific DPS humpback whale, Fin whale, and Sperm whale. (NMFS #AKR-2018-9717)

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

The project area is within the known range of all five species of Pacific salmon and two species of cod: Chum salmon (*Oncorhynchus keta*), Chinook salmon (*O. tshawytscha*), Sockeye salmon (*O. nerka*), Coho salmon (*O. kisutch*), and Pink salmon (*O. gorbuscha*), Saffron cod (*Eleginus gracillis*), and Arctic cod (*Arctogadus glacialis*). ADOT received concurrence from the National Marine Fisheries Service that the project with the requirement of specific mitigation measures was not likely to adversely affect EFH. (December 14, 2017)

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of

each Tribe regarding protected rights and resources will be accorded due consideration in this process. This PN serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

The Corps of Engineers (Corps) is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general

environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the U.S. – Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the U.S. – Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

Project drawings and a Notice of Application for State Water Quality Certification are enclosed with this PN.

District Commander
U.S. Army, Corps of Engineers

Enclosures

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
401 Certification Program
Non-Point Source Water Pollution Control Program

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WQM/401 CERTIFICATION
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501-2617
PHONE: (907) 269-7564/FAX: (907) 334-2415

NOTICE OF APPLICATION FOR STATE WATER QUALITY CERTIFICATION

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. **POA-2012-124, Kivalina Lagoon**, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify there is reasonable assurance the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project, with respect to Water Quality Certification, may submit written comments to the address above by the expiration date of the Corps of Engineer's Public Notice.